

ORIGINAL

**OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION**

Docket No. _____
ICC Office Use Only

XO COMMUNICATIONS SERVICES, INC.

Application for a Certificate of Local Exchange and
Interexchange Authority to Operate as a Facilities-
Based and Resale Carrier of Telecommunications
Services within the State of Illinois.

04-6519

ILLINOIS
COMMERCE COMMISSION
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CHIEF CLERK'S OFFICE

**APPLICATION FOR CERTIFICATE TO BECOME A
TELECOMMUNICATIONS CARRIER**

GENERAL

1. Applicant's Name(including d/b/a, if any)

FEIN # 91-2019476

XO COMMUNICATIONS SERVICES, INC. ("XO" or the "Applicant")

Address: 11111 Sunset Hills Road, Reston, Virginia 20190-5339

2. Authority Requested: (Mark all that apply)
- ☒ 13-403 Facilities Based Interexchange
- ☒ 13-404 Resale of Local and/or Interexchange
- ☒ 13-405 Facilities Based Local

3. Request for waivers/variances: In applications for local exchange service authority under Sections 13-404 or 13-405, waivers of Part 710 and of Section 735.180 of Part 735 are generally requested. In applications for interexchange service authority under Sections 13-403 and 13-404, waivers of Part 710 and Part 735 are generally requested. Please indicate which waivers Applicant is requesting and explain why Applicant is requesting each waiver/variance.

☒ Part 710 Uniform System of Accounts for Telecommunications Carriers

XO respectfully requests a waiver of 83 Ill. Admin. Code Part 710, which requires that telecommunications carriers keep books pursuant to Uniform System of Accounts ("USOA") principles. XO currently maintains its books and records in accordance with Generally Accepted Accounting Principles ("GAAP"). No other jurisdiction currently requires that XO keep its books pursuant to USOA principles. Therefore, without a waiver, XO would be required to maintain two sets of books. This is an extremely onerous requirement, particularly because GAAP accurately reflects XO's operations. Because the use of USOA principles would be unduly burdensome, and would provide little additional information to the Commission, a waiver of the USOA requirement is hereby requested.

- ☒ Part 735 Procedures Governing the Establishment of Credit, Billing, Deposits, Termination of Service and Issuance of Telephone Directories for Local Exchange Telecommunications Carriers in the State of Illinois

XO requests that the Commission waive application of 83 Ill. Admin. Code Part 735, "Procedures Governing the Establishment of Credit, Billing, Deposits, Termination of Service and Issuance of Telephone Directories for Local Exchange Telecommunications Carriers in the State of Illinois." These rules were adopted primarily to protect consumers from costly and unwarranted billing practices engaged in by monopoly telecommunications carriers. Realistically, as a non-dominant provider of services, in a telecommunications market wherein both regulators and consumers have begun to scrutinize providers closely, XO would be unable to impose such unfair practices on unwitting customers. Therefore, XO respectfully requests that the Commission waive application of these requirements.

- ☒ Section 735.180 Directories

XO respectfully requests a variance for 83 Ill. Admin. Code Section 735.180, for the provision of directories. XO will enter into a contractual agreement with incumbent providers to fulfill all directory requirements.

- ☐ Other

4. For all applicants requesting local exchange authority under Section 13-404 or Section 13-405, please complete the following:
- (a) the Standard Questions for Applicants Seeking Local Exchange Service Authority found in Appendix A of this document
 - (b) the 9-1-1 Questions for Applicants Seeking Local Exchange Service Authority found in Appendix B of this document;
 - (c) the Financial Questions for Applicants Seeking Local Exchange Service Authority found in Appendix C of this document; and
 - (d) if applicable, the Prepaid Service Questions for Applicants Seeking Local Exchange Service Authority found in Appendix D of this document.
5. In what area of the state does the Applicant propose to provide service?

XO intends to provide telecommunications services throughout the State of Illinois.

6. Please attach a sheet designating contact persons to work with Staff on the following. Please identify each contact person's (i) name, (ii) title, (iii) mailing address, (iv) telephone number, (v) facsimile number, and (vi) e-mail address.
- a) issues related to processing this application

Brett Heather Freedson, Esq. (bfreedson@kelleydrye.com)
Melissa Smith Conway, Esq. (mconway@kelleydrye.com)
Kelley Drye & Warren LLP
1200 Nineteenth Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 955-9600 (telephone)
(202) 955-9792 (facsimile)

- b) consumer issues

Kristin Shulman (kris.shulman@xo.com)
XO COMMUNICATIONS SERVICES, INC.
810 Jorie Boulevard
Suite 200
Oak Brook, Illinois 60523
(630) 371-3311 (telephone)
(630) 371-3256 (facsimile)

- c) customer complaint resolution

Theresa Powell (theresa.powell@xo.com)
XO Communications Services, Inc.
Two Easton Oval
Suite 300
Columbus, Ohio 43219
(614) 416-1104 (telephone)
(614) 416-9201 (facsimile)

- d) technical and service quality issues

Kristin Shulman (kris.shulman@xo.com)
XO COMMUNICATIONS SERVICES, INC.
810 Jorie Boulevard
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Oak Brook, Illinois 60523
(630) 371-3311 (telephone)
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- e) "tariff" and pricing issues

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- f) 9-1-1 issues

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g) security/law enforcement (Kris Shulman)

Kristin Shulman (kris.shulman@xo.com)
XO COMMUNICATIONS SERVICES, INC.
810 Jorie Boulevard
Suite 200
Oak Brook, Illinois 60523
(630) 371-3311 (telephone)
(630) 371-3256 (facsimile)

7. Please check type of organization?

- ☐ Individual
☐ Partnership
☐ Other (specify)

☒ Corporation
Date corporation was formed: January 5, 2000.
In what state? **Delaware**

8. Submit a copy of articles of incorporation and a copy of certificate of authority to transact business in Illinois.

A copy of the Applicant's Articles of Incorporation is attached hereto as *Exhibit A*. A copy of the Applicant's Certificate of Authority to transact business within the State of Illinois attached hereto as *Exhibit B* will be late filed with the Commission.

9. List jurisdictions in which Applicant is offering service(s).

XO currently is not authorized to provide telecommunications services within any jurisdiction. The authority requested by this Application is necessary to complete an internal corporate reorganization of XO, XO Communications, Inc. ("XO Communications") and the certificated telecommunications operating subsidiaries of XO Communications within the State of Illinois (the "XO Subsidiaries"). Specifically, upon the Commission's grant of the authority requested by this Application, the XO Subsidiaries each will transfer their respective intrastate assets and telecommunications customers to XO through a merger of XO and each of the XO Subsidiaries.¹ After the merger, the XO Subsidiaries will cease to exist, and XO will assume all of the intrastate assets and telecommunications operations of the XO Subsidiaries, and will provide telecommunications services to the current customers of XO Subsidiaries. The organizational charts attached hereto as *Exhibit C* reflect XO's corporate structure before and after the reorganization.

XO is a wholly owned, direct subsidiary of XO Communications, a Delaware corporation located at 11111 Sunset Hills Road, Reston, Virginia 20190-5339. The stock of XO Communications is publicly traded on the Over the Counter Bulletin Board under the symbol "XOCM.OB." XO Communications ultimately is controlled by Carl C. Icahn, a U.S. citizen, through his ultimate control and ownership of various companies.

XO Communications is a leading facilities-based provider of broadband telecommunications services. The company offers a complete set of telecommunications services including local and long distance voice, Internet access, Virtual Private Networking (VPN), Ethernet, Wavelength, Web Hosting and Integrated voice and data services. XO Communications, provides service through its facilities-based broadband networks and Tier One Internet peering relationships. The company also is one of the nation's largest holders of fixed wireless spectrum, covering 95% of the population of the 30 largest U.S. cities. XO Communications currently offers facilities-based broadband telecommunications services within and between more than 70 markets throughout the United States. XO Communications also is authorized by the FCC to provide interstate and international telecommunications services and, through one or more of its subsidiaries, is authorized to provide intrastate interexchange services virtually nationwide, and to provide competitive local exchange services in 47 states.

XO Illinois, Inc. ("XO Illinois") is a wholly owned, direct subsidiary of XO Communications and affiliate of XO, located at the same address. XO Illinois currently is authorized to provide facilities-based and resold interexchange and local exchange telecommunications services pursuant to authorizations granted by the Commission.² Thus, XO Illinois and its corporate parent, XO Communications, already have been found by the Commission to possess the requisite financial, managerial and technical qualifications necessary to operate as a provider of intrastate telecommunications services within Illinois.

Allegiance Telecom of Illinois, Inc. ("Allegiance Illinois") is a corporation organized under the laws of the State of Delaware. In furtherance of the reorganization of Allegiance Telecom, Inc., Debtor-in-Possession ("Allegiance"), and its subsidiaries, including Allegiance Illinois, under Chapter 11 of the U.S. Bankruptcy Code, the parties agreed that XO would acquire substantially all of the assets of Allegiance, including the stock of Allegiance Illinois. XO Communications and Allegiance filed with the Commission a notification of the transfer of control on February 26, 2004, and the transaction was consummated on June 23, 2004. As a result, Allegiance Illinois became a wholly owned, direct subsidiary of XO Communications.

¹ At such time as XO becomes authorized by the Commission to provide telecommunications services within the State of Illinois, the appropriate parties will file with the Commission a formal notification of this transaction.

² See Ill. Commerce Comm'n, Docket No. 97-0145 (Jul. 9, 1997).

The acquisition of Allegiance by XO Communications has resulted in a combined competitive carrier that holds sufficient financial, managerial, operations and technical resources to compete on a national basis against established and incumbent local exchange carriers and long distance companies. Prior to the transfer of control, Allegiance, through its operating subsidiaries, provided facilities-based telecommunications products and services to over 100,000 small and medium-sized business customers, large business enterprises (e.g., national customers with multiple locations), governmental entities, and other institutional users in 36 metropolitan areas in 24 states, including Illinois, and the District of Columbia.³

10. Has the Applicant, or any principal in Applicant, been denied a Certificate of Service or had its certification revoked or suspended in any jurisdiction in this or another name?

☐ YES (Please provide details) ☒ NO

11. Have there been any complaints or judgments levied against the Applicant in any other jurisdiction?

☐ YES ☒ NO

12. Has Applicant provided service under any other name?

☐ YES ☒ NO

13. Will the Applicant keep its books and records in Illinois? ☐ YES ☒ NO

If NO, permission pursuant to 83 Ill. Admin. Code Part 250 needs to be requested.

XO respectfully requests that the Commission waive the requirements of 83 Ill. Admin. Code Part 250, and accordingly, that the Commission grant XO authority to maintain its books, accounts, papers, records, memoranda, etc. at its corporate headquarters, in Reston, Virginia, where all personnel responsible for the maintenance of these documents are located. Establishing and maintaining a location in the State of Illinois for the sole purpose of maintaining books, accounts, papers, records, memoranda, etc. would create a significant additional cost to XO's operations, and would be unduly burdensome. XO will be represented by a statutory agent in the State of Illinois for service of process, and will provide the Commission with access to its books, accounts, papers, records, memoranda, etc. upon request.

MANAGERIAL

14. Please attach evidence of the applicant's managerial and technical resources and ability to provide service. This may be in either narrative form, resumes of key personnel, or a combination of these forms.

The brief biographies of XO's Executive Management attached hereto as *Exhibit D* demonstrate the superior managerial and technical qualifications of XO to provide telecommunications service within the State of Illinois.

³ Allegiance Illinois currently is authorized to provide facilities-based and resold interexchange and local exchange telecommunications services in Illinois pursuant to authorizations granted by the Commission. See Ill. Commerce Comm'n, Docket No. 97-0670 (May 20, 1998).

15. List officers of Applicant.

Carl J. Grivner, President and Chief Executive Officer
Wayne Rehberger, Executive Vice President and Chief Operations Officer
Lee Weiner, Senior Vice President, General Counsel and Secretary
Bill Garrahan, Acting Chief Financial Officer and Senior Vice President, Corporate Development & Strategy Planning
Ron Scott, Vice President, Real Estate
Kathy Isaac, Vice President and Controller
Michael O'Day, Chief Tax Officer
Kristi Jung, Treasurer
Ben Preston, Corporate Counsel, Director of Legal Affairs and Assistant Secretary

Applicant will supplement the biographical information for the Applicant's officers upon request.

16. Does any officer of Applicant have an ownership or other interest in any other entity which has provided or is currently providing telecommunications services?

☐ YES ☒ NO

17. How will Applicant bill for its service(s)? (At a minimum, describe how often the Applicant will bill for service and details of the billing statement.)

XO will render its own customers bills, and will send such bills directly to its customers on a monthly basis. Each customer bill rendered by XO will include service usage volumes, a summary of applicable rates and charges, contact information for billing and service inquiries, and dollar amounts to be remitted to XO for services provided.

18. How does Applicant propose to handle service, billing, and repair complaints? (At a minimum, describe Applicant's internal process for complaint resolution, the complaint escalation process, the timeframe and process by which the customer is notified by Applicant that they may seek assistance from the Commission?)

XO will resolve all service, maintenance and billing issues raised by customers in a reasonable and timely manner. XO's customer service representatives will be available to assist customers with a broad range of inquiries, including but not limited to, the types of services offered by XO, the rates at which XO's services are offered, questions and complaints regarding monthly billing statements, problems or concerns with current service, and general telecommunications issues.

For assistance with service, maintenance or billing issues, customers may contact XO toll-free, at any time, at (888) 575-6398. In addition, customers may submit written inquiries to XO at the following address:

**XO Communications, Inc.
11111 Sunset Hills Road
Reston, Virginia 20190-5339**

XO will address all customer complaints both promptly and efficiently. XO will resolve all customer disputes related to billing, service quality and product maintenance in an expeditious and fair manner, and in accordance with the Commission's guidelines set forth at 83 Ill. Admin. Code § 735.190.

XO's trained customer service representatives are authorized to resolve most customer complaints verbally, at the time of the customer's call or shortly thereafter. Customer complaints of a more complex nature may necessitate consultation with managerial staff, and may require internal investigation and review. Where such procedures are necessary, XO will notify the affected customer, in writing, of the results of its investigation and review. If the affected customer is dissatisfied with these results, and if the

customer's complaint cannot otherwise be resolved internally by XO's managerial personnel, the customer will be informed of his right to file the complaint with the Commission and to seek the Commission's assistance, and will be provided with the appropriate Commission contact information.

19. Will personnel be available at Applicant's business office during regular working hours to respond to inquiries about service or billing? ☒ YES ☐ NO
20. What telephone number(s) would a customer use to contact your company? **(888) 575-6398**
21. Will Applicant abide by all Federal and State slamming and cramming laws pursuant to Section 13-902 of the Public Utilities Act and Section 258 of the 1996 Telecommunications Act?
- ☒ YES ☐ NO
22. Please describe applicant's procedures to prevent slamming and cramming of customers?

XO will comply with the rules and regulations of the Federal Communications Commission and the Illinois Commerce Commission to prevent the slamming and cramming of telecommunications customers. Accordingly, XO will switch a customer of a different carrier only following receipt of a letter of authorization or third party verification confirming the request of such customer to change his preferred provider of telecommunications services, or otherwise in accordance with the procedures for mass migration of customers established by federal and state law.

23. If granted authority to operate as a local exchange carrier, will the applicant abide by the following 83 Illinois Administrative Code Parts: 705, 710, 720, 725, 730, 732, 735, 755, 756, 757, 770, and 772?
- ☒ YES ☐ NO (If no, please provide an explanation.)
24. Is Applicant aware that it must file tariffs prior to providing service in Illinois?
- ☒ YES ☐ NO

FINANCIAL

25. Please attach evidence of Applicant's financial fitness through the submission of its most current income statement and balance sheet, or other appropriate documentation of applicant's financial resources and ability to provide service.

As indicated above, XO is a wholly owned, direct subsidiary of XO Communications. As such, XO may rely on the financial capability of its corporate parent to fund its telecommunications operations within the State of Illinois, and accordingly, to provide the telecommunications services requested by this Application. The Form 10-Q of XO Communications, filed with the Securities and Exchange Commission for the quarterly period ended March 31, 2004, attached hereto as Exhibit E, demonstrates the financial fitness of XO and its corporate parent to provide the telecommunications services requested by this Application.

TECHNICAL

26. Does Applicant utilize its own equipment and/or facilities? ☒ YES ☐ NO

If YES, please list the facilities Applicant intends to utilize. Also include evidence that Applicant possesses the necessary technical resources to deploy and maintain said facilities:

The Applicant will employ a wealth of network assets positioned for the convergence of voice and data IP services. Specifically, XO will operate an OC-192 IP backbone with OC-12 uplinks in its markets and data centers that will provide optimum performance and reliability. A complete description of the national network of XO Communications, Inc. and the XO Subsidiaries is provided below:

Core OC-192 Backbone: The core of the XO backbone network is a mesh of OC-192 circuits, connecting XO Peering POPs and XO Data Centers. The XO OC-192 IP backbone runs completely across its own Inter-city facilities. Using a mesh of physically diverse OC-192 circuits, this backbone interconnects XO's five data centers with multiple high-capacity peering interconnections. Additionally, XO offers Dedicated Internet Access (DIA), DSL and Dial customers enhanced Internet connectivity by connecting each DIA market to the OC-192 backbone with dual OC-12c SONET-protected circuits. This network design delivers maximum end-to-end throughput as well as high levels of protection and redundancy. XO's OC-192 backbone utilizes an advanced IP design, ensuring scalability as well as the ability to offer advanced future IP services plus the added benefit of no single IP point of failure past the customers' access port. And since the XO OC-192 backbone and market connections run end-to-end across XO facilities, XO can quickly resolve any problems that may occur without any delays, which eliminates many of the common failure points found in older network designs.

Peering Infrastructure: As one of the few fully peered, facilities-based Tier 1 network backbone providers in the United States, XO has substantial private and public peering arrangements that provide direct paths to all other major network service providers so that Internet Traffic travels with peak speed.

Connectivity from Internet Access POPs to the XO Backbone: XO currently offers Dedicated Internet Access connections via MetroPOPs in 31 markets and DSL connections in 45 markets. All DIA markets are connected in the closest OC-192 IP Core Node; dual uplinks are provided from each Metro market into the closest inter-city core node at speeds from OC-3c (155 mbps) to OC-48c (2.4 Gbps).

In Illinois, XO's fiber network serving the Chicago metropolitan area consists of both SONET and C/DWDM systems. XO's standard architecture consists of SONET access rings connected to ILEC serving wire centers and SONET or C/DWDM rings providing connectivity to interexchange carriers. Services are typically collected via access rings from the ILEC, digitally cross-connected in XO central offices and then routed to XO's switches, long haul network, IP network, other customers, or other carriers. SONET and C/DWDM systems are also used to provide direct on-net connectivity to XO's end user customers. XO deploys various switching technology in Chicago, including soft-switch, and Class 4 and Class 5 voice switches. XO has located IP nodes and a data center in Chicago.

If NO, which facility provider(s)'s services does the Applicant intend to use?

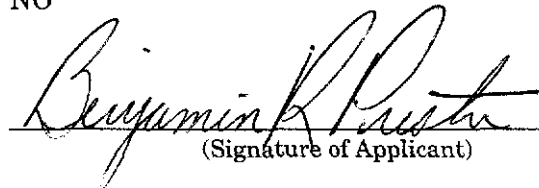
27. Please describe the nature of service to be provided (e.g., operator services, internet, debit cards, long distance service, data services, local service, prepaid local service).

XO will offer to consumers within the State of Illinois a complete set of telecommunications services, including local and long distance voice, Internet access, Virtual Private Networking (VPN), Ethernet, Wavelength, Web Hosting, and Integrated voice and data services.

28. Will technical personnel be available at all times to assist customers with service problems?

☒ YES ☐ NO

29. If Applicant intends to provide payphone service, will the equipment utilized comply with FCC requirements and Finding (9) of the Commission Order entered in Docket No. 84-0442 on June 11, 1986, including, but not limited to: (a) touch dialing; (b) access to 9-1-1 and "0" operator dialing without use of a coin; (c) rules governing use of payphones by disabled persons; (d) ability to complete local and long-distance calls; (e) unlimited duration for local calls; and (f) a message explaining the telephone's general operations, dialing instructions for emergency assistance, payphone owner's name, method of reporting service problems and method of receiving credit for faulty calls? ☐ YES ☒ NO

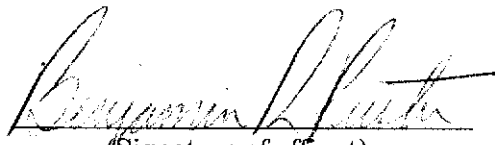

(Signature of Applicant)

VERIFICATION

OATH

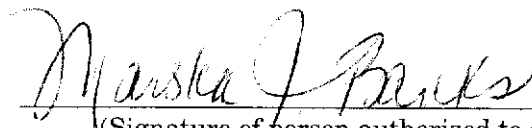
State of Virginia)
County of Fairfax)ss

Ben Preston makes oath and says that he is **Corporate Counsel, Director of Legal Affairs and Assistant Secretary of XO Communications Services, Inc.**, that he has examined the foregoing application and that to the best of his knowledge, information, and belief, all statements of fact contained in the said application are true, and the said application is a correct statement of the business and affairs of the above-named applicant in respect to each and every matter set forth therein.


(Signature of affiant)

Subscribed and sworn to before me, a Notary Public Assistant Secretary
(Title of person authorized to administer oaths)

in the State and County above named, this 11th day of August, 2004.


(Signature of person authorized to administer oath)
Comm. Exp. 5-31-05